

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3574 of 1985

Date of decision: 5-5-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANKARI J PUROHIT

Versus

STATE OF GUJARAT

Appearance:

MR MD RANA for Petitioners

Mr. H. L. Jani for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05.05.1997

CAV JUDGEMENT

The petitioner, a work charge tracer working in the office of the Superintending Engineer, Rajkot Irrigation Project Circle, Rajkot filed this special civil application before this Court challenging the order of respondent No.1 dated 15th February, 1982 under which under which his services as Additional Assistant Engineer (Supervisor) were terminated. Further prayer has been made by the petitioner for direction to the respondents to appoint the petitioner as Additional Assistant Engineer (Civil) and consider him as so appointed with effect from 16th February, 1982 with all other consequential benefits.

2. The facts of the case in brief are that the petitioner was initially appointed as work charge tracer in the office of the Executive Engineer, Irrigation Projects Division, Junagadh, on 10th July, 1975 in the pay-scale of Rs.260-400. On account of economic measure the services of the petitioner were terminated under order dated 27th October, 1975 made by the Executive Engineer, Irrigation Project Division, Junagadh. Under order dated 17th October, 1977 of the Superintending Engineer, Rjakot Irrigation Project Circle, Rajkot, the petitioner was appointed as tracer on regular establishment. The date of birth of the petitioner is 4th July, 1951. On the date of aforesaid appointment as tracer on regular establishment the petitioner was aged 26 years. Applications were invited in the year 1981 for appointment on the post of Additional Assistant Engineer. The petitioner, who fulfilled the requisite qualifications prescribed for appointment to the post of Additional Assistant Engineer (Supervisor), applied for the post. The petitioner was selected for the post of Additional Assistant Engineer by the selection committee, and he came to be appointed on the post under order annexure-A dated 5th February, 1982 of the Superintending Engineer, Rajkot Irrigation Scheme Circle, Rajkot. Under order dated 15th February, 1982 annexure-B of the Executive Engineer, Irrigation Project Division, Rajkot, under whom the petitioner was working as Tracer, he was relieved from the said post from 15th February, 1982 in order to join his new post. The order relieving the petitioner from the post of Tracer came to be cancelled under order dated 16th February, 1982 of the Executive Engineer, Irrigation Project Division, Rajkot. The petitioner made protest against the cancellation of his appointment on the post of Additional Assistant Engineer (Supervisor). The petitioner's appointment on the post

of Additional Assistant Engineer was cancelled on the ground that he was overaged for the said post. Hence this special civil application before this Court.

3. The respondents filed reply to this special civil application and contested the claim of the petitioner for appointment to the post of Additional Assistant Engineer (Supervisor) on the ground that he was overaged. The petitioner filed rejoinder to the reply. Mr.M.D. Rana, learned counsel for the petitioner, contended that the petitioner was within the age limit when he was given appointment in the year 1975 as work charge Tracer, and in the year 1977 as Tracer on regular establishment, which was a Government service and as such the age bar for appointment to the post of Additional Assistant Engineer (Supervisor) will not come in his way. It has next been contended, by referring to the letters of the Superintending Engineer, Rajkot Irrigation Project Circle, Rajkot, dated 24th March, 1982 that the Department itself considered that the petitioner was within age limit. It has next been contended by the counsel for the petitioner that the services of those tracers who were not within age limit came to be regularized under the Government Order dated 3rd March, 1980 and as such the same benefit should have been given to the petitioner. Carrying further this contention the counsel for the petitioner contended that under the Government Resolution dated 23rd December, 1981 age relaxation has been made in the matter of recruitment for supervisors working in the Gujarat Panchayat Services, for those panchayat employees like Tracer, Karkoon etc., who had acquired the qualification of Diploma after obtaining permission from the Panchayat, and similar treatment should have been given to the petitioner. Lastly the counsel for the petitioner contended that hostile discrimination has been made by the respondents in the matter of appointment to the post of Additional Assistant Engineer, on the ground of age bar.

4. The contention of the counsel for the petitioner is that the persons named in para 5 of the special civil application were also holding the post of Tracer or other posts like Clerk, Assistant Draftsman, etc., and they were not within the age limit for the post, but they were considered to be within the age limit by giving the benefit of employment on those posts. On the other hand the counsel for the respondents contended that the petitioner could not be given the benefit of age relaxation on the basis of appointment on the post of Tracer on regular establishment which was made in the

year 1977 as his appointment on that post was age barred. The maximum age limit for appointment to the post of Tracer on regular establishment was 24 years. At the relevant time the petitioner was aged 26 years. Other persons, reference to whom has been made by the petitioner in para 5 of the special civil application, were within the age limit prescribed for the category of post on which they were appointed earlier to their appointment after selection on the post of Additional Assistant Engineer (Supervisor), and as such their cases are distinguishable with the case of the petitioner and it cannot be said to be a case of hostile discrimination made in the matter of public employment. It has next been contended that there is a gap of more than 2 years in between two appointments, i.e. earlier appointment of the petitioner as work charge Tracer and second appointment as Tracer on regular establishment. Lastly the counsel for the respondents contended that the relaxation in the maximum age prescribed for the post would be permissible only where the case of the candidate falls under Rule 8 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 (hereinafter referred to as the '1967 Rules') and not otherwise and the case of the petitioner does not fall under the said rule and as such the petitioner has rightly not been appointed on the said post.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is not in dispute that the post of Supervisor (Civil) has been redesignated as Additional Assistant Engineer. Recruitment to the post of Supervisor (Civil) is made in accordance with the provisions of the Supervisor (Civil) in the Subordinate Service, Class - III Recruitment Rules, 1979 (hereinafter referred to as '1979 Rules'). Rule 2 of the 1979 Rules provides that appointment to the post of Supervisor (Civil) in the subordinate service, Class-III under the Irrigation Department shall be made by direct selection. Rule 3 provides for the eligibility for appointment by direct selection to the aforesaid post. The maximum age limit prescribed for appointment to the post of Supervisor (Civil) under Rule 3 of 1979 Rules is 28 years. Proviso to rule 3 provides that the age limit may be relaxed in favour of a candidate who is already in the Service of Government of Gujarat in accordance with the provisions of Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, as amended from time to time.

6. The counsel for the petitioner does not dispute that in the year 1977 when the petitioner was appointed

on the post of Tracer on regular establishment in the Irrigation Department the maximum age limit for appointment on that post was 24 years. The petitioner was appointed as Tracer on work charge establishment on 10-7-1975. So, on that date he was more than 24 years of age. So far as the second appointment as Tracer on regular establishment is concerned, there is no dispute that he was more than 26 years. The parties are not at issue on the question that at the time both the appointments of the petitioner - as work charge Tracer and as Tracer on regular establishment - he was over aged. The counsel for the petitioner does not dispute that the persons whose names have been mentioned in para 5 of the special civil application were within the age limit prescribed for the post on which they were appointed initially in Government service.

7. Rule 3 of the 1979 Rules makes provision for relaxation in the upper age limit in favour of a candidate who is already in service of the Government of Gujarat in accordance with the 1967 Rules. The 1967 Rules have been framed under Article 309 of the Constitution of India and they are statutory rules. Rule 2 of the 1967 Rules defines 'Post' to mean a post under the State Government included in the State Service or Subordinate Service; and 'Service' to mean any service under the State Government included in the State Services or Subordinate Services. Clause (viii) of Rule 2 defines "State Services" to mean the services and posts specified as such in sub-rule (1) of Rule 4; and clause (ix) defines "Subordinate Services" to mean the services and posts specified as such in sub-rule (2) of Rule 4. Services and posts classified as Class III are known as subordinate services, and the post of Supervisor (Civil), being class III post, is subordinate service. Sub-rule (1) of Rule 8 of 1967 Rules provides that subject to the provisions of these rules, no person shall be appointed to any service or post, unless he possesses the qualification, if any, prescribed in the rules relating to the recruitment to such service or post. Sub-rule (5) of Rule 8 provides that notwithstanding anything to the contrary, contained in any rules for the time being in force relating to the recruitments to any service or post the upper age limit for the purposes of recruitment prescribed in such rules shall not apply to a candidate who is already in Gujarat Government Service either as a permanent Government Servant or as a temporary Government Servant officiating continuously for six months in a substantive or leave vacancy or in a vacancy caused as a result of deputation of other servants and was within the age limit prescribed for the post at the time of his

first appointment in Government Service. There are two provisos to sub-rule (5) of Rule 8 of the 1967 Rules. The first proviso provides that such upper age limit shall apply to such candidate in a case where recruitments to a post or service is done through competitive examination or by direct selection for which experience has not been prescribed as one of the qualifications for such post. The second proviso provides that where a post requiring a medical, engineering or agricultural degree or diploma as a qualification is to be filled by direct selection through the Public Service Commission a Government Servant who was within the age limit when appointed to such post shall, if he subsequently applies for any such post be entitled to relaxation from the application of the upper age limit prescribed as aforesaid, even if experience has not been prescribed as one of the qualifications for such post. Validity of sub-rule (5) of Rule 8 of the 1967 Rules is not questioned by the petitioner in this special civil application. It is not in dispute that the post of Supervisor (Civil) under the 1967 Rules was not provided to be filled by direct selection through Public Service Commission, meaning thereby the parties are not at issue that the post of Supervisor (Civil), a class III post, was not within the purview of Gujarat Public Service Commission.

8. The Respondent State, under its communication dated 14th September, 1982 addressed to the Chairman, Selection Committee (Irrigation), Supervisor - Overseer (Civil), Central Draft Survey Circle, Gandhinagar, has given out the reason for non appointment of petitioner on the post of Additional Assistant Engineer (Civil) stating that Diploma in Civil Engineering is not the qualification prescribed by the Rules of Recruitment on the post of Tracer, whereas Diploma in Civil Engineering is the minimum educational qualification prescribed for the post of Additional Assistant Engineer (Civil). Thus the post of Tracer and that of Additional Assistant Engineer (Civil) are not requiring similar qualification and therefore even if a Government employee appointed on the post of Tracer becomes eligible for appointment to the post of Additional Assistant Engineer (Civil) and is found within the prescribed age limit at the time of appointment as Tracer no relaxation can be granted in the upper age limit at the time of appointment to the post of Additional Assistant Engineer (Civil).

9. In the reply to the special civil application, the respondents have come out with reasons to justify their action of not giving appointment to the petitioner

on the post of Additional Assistant Engineer (Civil). The first reason given is that the minimum qualification for appointment to the post of Tracer was not Diploma in Civil Engineering, whereas for the post of Additional Assistant Engineer (Civil), Diploma in Civil Civil Engineering is the minimum qualification. Another reason given is that the petitioner had crossed the age limit at the time of his appointment on the post of Tracer. However, the matter has to be considered with reference to Rule 8 of the 1967 Rules. In the said Rules, specific provision is made for relaxation of the upper age limit in the case of appointment on the posts and services in the Government of Gujarat.

10. 'Post' has been defined in section 2 of the 1967 Act to mean a post under the State Government included in the State Services or Subordinate Service. 'Subordinate Services' are defined to mean the services and posts classified as Class III. It is not the case of either of the parties to the petition that Tracer is not class III post. Benefit of sub-rule (5) of Rule 8 would have been available to the petitioner only if he was within the age limit prescribed for the post of Tracer at the time of his first appointment in the Government service. But the nature of appointment is also spelt out in sub-rule (5) of Rule 8 as a permanent Government servant or as a temporary Government officiating continuously for six months in substantive or leave vacancy or in a vacancy caused as a result of deputation of other servants. The first appointment of the petitioner, as stated earlier, was as work charge Tracer, made on 10th July, 1975. Though it is not necessary to enter into controversy whether work charge appointment will fall under sub-rule (5) of Rule 8 of the 1967 Rules or not, that appointment came to be terminated on 27th October, 1975, and as such it was for a period less than six months. The petitioner, therefore, would not have been entitled to the benefit under the aforesaid rule for relaxation of maximum age limit prescribed for appointment to the post of Additional Assistant Engineer (Civil). Secondly, on 10th July, 1975 the petitioner was more than 24 years of age and as such otherwise also no benefit of the provisions of relaxation of upper age limit under sub-rule (5) of Rule 8 of 1967 Rules could have been given to the petitioner, for appointment to the post of Additional Assistant Engineer (Civil). So far as the second appointment of the petitioner as Tracer on temporary establishment is concerned, he was more than 26 years of age, and he was over aged for appointment on the said post itself. So, on the basis of the second appointment also the petitioner could not have been given

any benefit of sub-rule (5) of Rule 8 of the 1967 Rules. The first proviso to sub-rule (5) states that such upper age limit shall apply to such candidate in a case where recruitments to a post or service is done through competitive examination or by direct selection for which experience has not been prescribed as one of the qualifications for such post. So, relaxation in the upper age limit will not be available to a candidate in a case where recruitment to the post or service is done by direct selection and experience has not been prescribed as one of the qualification for the post. The 1979 Rules which regulate recruitment and selection on the post of Supervisor (Civil) [Additional Assistant Engineer (Civil)] provides for recruitment on the said post by direct selection and experience is not one of the qualifications prescribed for the said post. When experience is not one of the qualifications prescribed for the said post, about which there is no dispute, sub-rule (5) of Rule 8 of the 1967 Rules will not come to the rescue of the petitioner in any manner. So far as the second proviso to sub-rule (5) of 1967 Rules is concerned, suffice it to say that it does not apply to the case of the petitioner. Admittedly the post of Additional Assistant Engineer (Civil) is not required to be filled by direct selection through Public Service Commission. Secondly, the minimum qualification for the post of Tracer was not Diploma in Civil Engineering.

11. Net result of the aforesaid discussion is that the petitioner was not eligible for appointment to the post of Additional Assistant Engineer (Civil) at the relevant time. In fact he should not have been called for selection as he had crossed the age limit. However, even if he was called for selection, and he was selected and appointment was also given, before he could have joined that post the appointment has not been given effect, i.e. it has been cancelled and the petitioner has not acquired any right on the post and none of his legal or fundamental right has been infringed.

12. Now I may advert to the contention raised by the counsel for the petitioner on the ground of discrimination. It is not in dispute that the persons whose names are mentioned in para 5 of the special civil application were holding the posts of Tracer, Assistant Draftsman or Clerk or Technical Assistant. For those posts minimum qualification for appointment was not Diploma in Civil Engineering. But as rightly pointed by the respondents, all those persons were within the age limit prescribed for the respective posts on which they were initially appointed in Government service.

Relaxation of age limit in the case of those persons may not be in accordance with sub-rule (5) of Rule 8 of the 1967 Rules. The reason is very obvious. The first proviso to sub-rule (5) Rule 8 goes heavily against those persons for appointment as Additional Assistant Engineer (Civil). However, the question which arises for consideration of this Court is whether on the basis of the appointment of those persons, which may also be contrary to the 1967 Rules read with the 1979 Rules, the petitioner can raise a plea of discrimination. The counsel for the petitioner has placed reliance on the decision of this court in L.P.A. No.110/76 decided on 12th March, 1980. The facts of the case before this Court were that the year 1973 the petitioner therein applied for the post of District Sports Council Secretary in response to an advertisement published in that behalf by the Director, Youth Services and Cultural Activities, Government of Gujarat. The petitioner was informed that he had been selected for appointment to the post subject to the approval of the State Government. The State Government did not approve his selection. The petitioner made representation, but that came to be turned down. He then approached this Court by way of writ petition for a direction to the respondents to appoint him to the post of District Sports Council Secretary. The respondents therein had given out reasons for not according approval to the selection of the petitioner therein for the post of District Sports Council Secretary, stating that he was over aged. Learned single Judge who heard the special civil application interpreted sub-rule(5) of Rule 8 of the 1967 Rules, and observed that since experience was one of the qualifications prescribed for the post, it is obvious that the post in question which was to be filled in by direct selection, sub-rule (5) of Rule 8 would not help the petitioner in that case. The decision of the learned single Judge has been approved by the Division Bench. The second contention of the petitioner therein was that the Government had relaxed the age limit to the persons who were equally aged barred like the petitioner and names of those persons were mentioned. In that case Division Bench of this Court found that out of those persons one person was within the age limit prescribed and in case of five persons age limit was relaxed. The reasons given by the respondents therein for relaxation of the age limit were not accepted. While dealing with this question the Division Bench observed thus:

"With great respect to our learned brother, we are unable to agree with his reasoning on this aspect of the matter. The violation of Article 14 of which Article 16 is an extension occurs

when persons similarly situated are treated unequally or in a differentiated or discriminatory manner. Out of the six persons mentioned in para 6 of the petition, according to the affidavit-in-reply, Mr. Pandit was within age and was not barred by age limit, but, the other five individuals, even according to the affidavit-in-reply, were age barred and age bar was relaxed in their cases. The Government in the affidavit-in-reply does not mention as to what were the norms by which it was guided in relaxing the age limit in the cases of these five individuals. The petitioner has already stated that these five persons who are mentioned in paragraph 6 of the petition were selected for the same post for which petitioner was selected, viz. District Sports Council Secretary, along with the petitioner. In their cases the age bar had been relaxed by the State Government and it was not relaxed in the case of the petitioner. The State Government in para 14 which we have set out in extenso merely mentions that in relaxing the age limit the Government has to take into consideration various factors relevant for the purpose of judging suitability of a particular candidate and to exercise its discretion. The suitability of the candidates for the post in question was considered by the Selection Committee and the petitioner and other persons were selected for the said post. The Government has not mentioned the various factors relevant for the purpose of judging suitability of a particular candidate and to exercise its discretion for relaxing the age limit. The Government itself says in the affidavit-in-reply that those persons were over-aged by 10 months to 2 years and four months, whereas, the petitioner was over-age by as much as four years. If there are no norms and if there are no principles laid down for relaxing the age limit arbitrariness is bound to creep in. No norms which the State government has prescribed for itself for the purpose of exercising its discretion in this type of cases have been shown to us or have been set out in the affidavit-in-reply. In these circumstances, with great respect to our learned brother Sheth J., it must be held that there was violation of Articles 14 and 16 of the Constitution of India inasmuch as the age limit was relaxed in the case of five others and was not relaxed in the case of the petitioner alone,

though all of them were similarly situated so far as age bar was concerned. The norms which guided the Government have not been pointed out and hence it must be held that the action of the Government in not relaxing the age limit in the case of the petitioner alone was arbitrary and therefore it must be struck down as violative of Article 16 of the Constitution of India."

13. Relaxation could have been only in accordance with the provisions of Rule 8 of the 1967 Rules and the case of those persons mentioned in para 5 of this special civil application could not have fallen under Rule 8. So the plea of discrimination is available only on the basis of appointments made of the persons in accordance with the rules. This Court sitting under Article 226 of the Constitution cannot issue writ of mandamus directing the respondents to make appointment of petitioner who was not eligible. If such a writ is issued, this court will be perpetuating the illegality by directing the respondents to act contrary to the rules, which is not permissible to this Court sitting under Article 226 of the Constitution of India. The Supreme Court, in the case of Chandigarh Administration vs. Jagjit Singh, reported in AIR 1995 SC 705, held that discrimination based on illegal, unwarranted orders of the authority will not give rise to the petitioner a plea of discrimination. In the case on which reliance has been placed by the counsel for the petitioner, there was no dispute that the appointments given to those persons were illegal or de hors the rules. It was also not at issue therein that in the case of those persons relaxation in the maximum age ultimately could not have been legally made. While dealing with the other contentions in the earlier part of this judgment, I have observed that in the case of those persons whose names have been mentioned in para 5 of the Special Civil Application by the petitioner, relaxation in the age eligibility prescribed for appointment on the post of Additional Assistant Engineer (Civil) may not be permissible. It is not the case of the petitioner that in the case of those persons mentioned in para 5 of the special civil application age relaxation of age has been made in accordance with 1967 Rules. The matter would have been differed where in the case of those persons the age could have been legally relaxed. Then the petitioner could have made a plea of discrimination and not otherwise. The respondents have pointed out the distinction in the case of petitioner and those persons with precision that those persons were within the age limit prescribed for the post of Tracer or other posts,

which was not the case of the petitioner. However, otherwise also I have my own doubt and reservation whether in the case of those persons whether any relaxation in the age limit could have been made for appointment to the post of Additional Assistant Engineer. Those persons are not before this Court and as such it is not advisable to make inquiry about validity of appointment of those persons nor in the absence of those persons such a question could be gone into and decided on merits. Apart from this, this court cannot give any direction for ousting those persons. In such a case what course is open to this court has been clearly pointed out by the Hon'ble Supreme Court in the case of Chandigarh Administration (supra). The Hon'ble Supreme Court in paras 8 and 9 of the judgment held:

"Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be . That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal / unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it cannot be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act / order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas

would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of Law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. Such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise.

Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.

In the instant case no findings were recorded by the High Court that the order in favour of party in earlier case was a legal and valid one and the case of the writ petitioners was similar in material respects to the earlier case but the party in that case has not been accorded the same treatment. Therefore, the order of the High Court allowing writ petition upholding the plea of discrimination on the basis of such earlier petition would not be sustainable."

In this regard it is also advantageous to refer to the decision of this court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat, 1995 (2) GLH 228.

of the Hon'ble Supreme Court in the case of Sneh Prabha vs. State of U.P., (1996) 7 SCC 426. The relevant discussion has been made by the Hon'ble Supreme Court in para 8 of the judgment as follows:

"The benefit was given only to three co-owners whose land formed part of a particular strip of land and the excess thereof obviously was not capable of use or inconvenient to proper use by the owner of the leased land. As a special case, benefit was given to them. The consistent policy has been that a person who purchased the land, after Section 4(1) notification was published, becomes disentitled as he was not the owner as on the date on which the notification under Section 4(1) was published, as indicated in the Land Policy itself. No discrimination, much less invidious discrimination, was meted out to the appellant. Even if a benefit is wrongly given in favour of one or two, it does not clothe with a right to perpetuate the wrong and the court cannot give countenance to such actions though they are blameworthy and condemnable. Equality clause does not extend to perpetuate wrong nor can anyone equate a right to have the wrong repeated and benefit reaped thereunder".

15. Reference may also have to be made to another decision of the Hon'ble Supreme Court in the case of the Secretary, Jaipur Development Authority, Jaipur vs. Daulat Mal Jain, JT 1996 (8) SC 387. While dealing with the applicability of Article 14 to legitimise an illegal and illegitimate action, held that judicial process cannot be abused to perpetuate illegality. The apex court held that Article 14 has no application or justification to legitimise an illegal and illegitimate action. It has been further held that one illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts. The relevant discussion on this issue by the Hon'ble Supreme Court is in para 24 and para 27 of the judgment which is as under:

"The question then is: whether the action of not delivering possession is ultra vires act and violates Article 14 of the Constitution? We had directed the appellants to file an affidavit explaining the actions taken regarding the allotment which came to be made to others. An affidavit has been filed in that behalf by Shri Pawan Arora, Deputy Commissioner, that allotments in respect of 47 persons were cancelled and

possession was not given. He listed various cases pending in this Court and the High Court and executing court in respect of other cases. It is clear from the record that as and when any person had gone to the court to get the orders of the LAO enforced, the appellant -authority resisted such actions taken consistent stand and usually adverse orders have been subjected to decision in various proceedings. Therefore, no blame of inaction or favouritism to others can be laid at the door of the present set up of the appellant-authority. When the Minister was the Chairman and had made illegal allotments following which possession was delivered, no action to unsettle any such illegal allotment could have been taken then. That apart, they were awaiting the outcome of pending cases. It would thus be clear that the present set up of the bureaucrats has set new standards to suspend the claims and is trying to legalise the ultra vires actions of Minister and predecessor bureaucrats through the process of law so much so that illegal and ultra vires acts are not allowed to be legitimised nor are to be perpetuated by aid of Article 14. That part, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor court can countenance that benefit had from infraction of law must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.

In Chandigarh Administration & Another

vs. Jagjit Singh & another, (1995) 1 SCC 745, allotment of the sites was subject matter under several proceedings in the High Court; ultimately some persons had the benefit of allotment while others were denied of the same. When Article 14 was pressed into service, this Court in paragraph 8 at page 750 had held that basis of the

principle, if it can be called one, on which the writ petition had been allowed to be taken, was unsustainable in law and indefensible in principle. The mere fact that the respondent-authority had passed a particular order in the case of another person similarly situated, can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of this case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose."

After referring to other decisions including the decision in the case of Chandigarh Administration (supra) the Supreme Court in para 28 of the judgment observed:

"A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. Suffice it hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

16. The appointment was not given to the petitioner in the year 1982. The petitioner has not made any grievance against that appointment within reasonable time. This writ petition has been filed by the petitioner on 12-7-1985, that is, after more than three years from the date of denial of appointment. Now we are in the year 1997. The writ petition therefore suffers from the vice of delay and laches. There is no explanation whatsoever coming from the petitioner for the long delay

in approaching this court. I do not consider it be a fit case where interference is to be made by the Court sitting under Article 226 of the Constitution of India. This is yet another ground which goes against petitioner.

17. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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